**FTR PARTICIPATION AGREEMENT**

**VERSION 1.4**

**Between:**

**(A) Energy Market Services**, a division of Transpower New Zealand Limited, in its capacity as **FTR manager**; and

(B) [Add Participant name] (the **Participant**).

**It is agreed:**

**Application of this agreement**

# This agreement relates to the **Participant’s**:

## status as an **FTR participant**;

## participation in **FTR auctions**;

## use of the **FTR information system**; and

## acquisition of **FTRs** through the **FTR information system** or otherwise,

## (together, ***FTR participation***).

**Definitions and interpretation**

# In this agreement:

## ***business day*** has the meaning in paragraph (b) of the definition of “business day” in Part 1 of the **Code**;

## **FMCA certificate** means:

### an eligible investor certificate under clause 41 of Schedule 1 of the Financial Markets Conduct Act 2013 in respect of the issue or sale of **FTRs**; or

### a wholesale investor certificate under clause 44 of Schedule 1 of the Financial Markets Conduct act 2013;

## ***FTR policy*** means a policy issued by the **FTR manager** under the **FTR allocation plan**;

## ***registration information*** means information provided by, or on behalf of, the **Participant** to the **FTR manager**, **Electricity Authority** or **clearing manager** in the course of the registration process for **FTR participation**, including the information and warranties in this agreement, information provided through the **FTR information system**, and **FMCA certificates**;

## words defined in this agreement other than in clause 2 have the meanings given to them throughout this agreement, unless the context requires otherwise.

## words in bold that are not defined in this agreement but are defined in:

### the **FTR allocation plan**;

### the Electricity Industry Act 2010 (***Act***);

### the Electricity Industry (Enforcement) Regulations 2010 (***Regulations***); or

### the Electricity Industry Participation Code 2010 (***Code***),

## have the same meaning in this agreement as given to them in those documents, in the above order of precedence;

## clause and other headings are for ease of reference only and will not affect this agreement’s interpretation;

## references to the singular include the plural and vice versa;

## references to clauses are to clauses in this agreement;

## references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any by‑law, regulation, order, statutory instrument, determination or subordinate legislation made under it;

## any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done; and

## references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form.

**Incorporation of relevant obligations**

# This agreement supplements the relevant provisions of the **Act**, **Regulations**, **Code** and **FTR allocation plan** applying to the **FTR manager** and **FTR participants**, which provisions will prevail if there is any inconsistency.

# The **Participant** acknowledges and agrees that:

## its **FTR participation** is on the basis of, and subject to its compliance with:

### the **auction rules**;

### the **assignment rules**;

### all other provisions of the **FTR allocation plan** and **FTR policies** that are:

#### specified on their face as applying to and binding on **FTR participants**, or

#### specified on the **FTR information system** as applying to and binding on **FTR participants**,

### (together, ***relevant FTR allocation plan provisions***). The **Participant** agrees to be bound by and comply with the **relevant FTR allocation plan provisions** as if they were set out in full in this agreement; and

## an **FTR** is not a contract, however the **FTR terms** are the basis on which the **Participant** will be entitled to receive, or be liable to pay, an amount to the **clearing manager** in respect of the acquisition and settlement of the **FTR**.

**Electronic assignment**

# For the purposes of clause 13.248(2)(a) of the **Code**, the **Participant** consents to the use of the electronic **FTR** assignment form available through the **FTR information system** from time to time.

**Warranties and registration information**

# The **Participant** warrants that:

## it has full power and authority to become and be an **FTR participant**;

## it is registered with the **Electricity Authority** as a **trader in electricity**;

## it is a natural person resident in New Zealand or a body corporate incorporated in New Zealand, or a person with a branch office or other substantial physical presence in New Zealand through which it conducts its **FTR participation**;

## it has provided the **FTR manager** with a current and valid **FMCA certificate**; and

## its **registration information** is accurate, correct and current.

# The warranties in subclauses (a) to (d) of clause 6 are given at the date of this agreement and at all times during the **Participant’s FTR participation**. The warranty in subclause (e) of clause 6 is given at the time the relevant **registration information** is provided.

# The **Participant** must maintain and update its **registration** **information** as soon as reasonably practicable to ensure it is kept accurate, correct and current.

**Security**

# The **Participant** is responsible for ensuring that each secure log-on and password issued to or created by it for access to the **FTR information system** (together, ***authorisation information***) is:

## kept confidential and secure; and

## only used by authorised personnel of the **Participant**.

# The **Participant** is responsible for and bound by all bids, acquisitions and other activities conducted on the **FTR information system** using its **authorisation information**.

# The **Participant** should notify the **FTR manager** immediately if it becomes aware that the confidentiality of any of its **authorisation information** has been compromised. If so notified the **FTR manager** will take steps to terminate all **FTR information system** use rights associated with the relevant **authorisation information** as soon as reasonably practicable, but, in accordance with clause 10, the **Participant** will remain responsible for and bound by all bids, acquisitions and other activities conducted on the **FTR information system** using the **authorisation information** before such termination.

**Risk**

# The **Participant** acknowledges and agrees that:

## its **FTR participation** is conducted solely at its own risk in all respects; and

## it is responsible and liable for all acts and omissions of its authorised personnel, and of any person who uses **authorisation information** whether such use is authorised by the **Participant** or not, in respect of the **Participant’s FTR participation**.

# The **FTR manager** provides the **FTR information system** on an "as is" and "as available" basis. The **FTR** **manager** does not warrant that the services provided through the **FTR information system** will be uninterrupted, timely, secure or error free and takes no responsibility for any **FTR information system** unavailability, or any loss that is incurred as a result of the **FTR information system** being unavailable. The **FTR manager** will use reasonable endeavours to publish notice of any planned outage of the **FTR information system** on the **FTR information system** website at least two **business days** before the start time of the planned outage.

# All of the **FTR manager’s** decisions in relation to the **Participant’s** **FTR participation** are final and binding on the **Participant** unless the **FTR manager** decides otherwise.

# Nothing in clauses 12, 13 and 14 limits or excludes the **FTR manager’s** obligations under the **Code** or liability for breaching the **Code**.

# **Liability**

# Neither the **FTR manager** nor the **Participant** will have any liability to the other party, or any other person whatsoever, in relation to the **Participant’s** **FTR participation** or the **FTR information system** except to the extent that:

## the **FTR manager** or **Participant** is liable in relation to a breach of the **Code**;

## the liability is based on the **FTR manager’s** or **Participant’s** failure to comply with this agreement (subject to clause 18); or

## the **Participant** is liable under the indemnity in clause 17.

# The **Participant** indemnifies, and will keep indemnified, the **FTR manager** for any loss, damage, cost, expense or claim suffered or incurred by the **FTR manager** in relation to any wilful or negligent misuse of, damage to, interference with or harm to the **FTR information system**, or any network or system underlying or connected to the **FTR information system**, by the **Participant**.

# Neither the **FTR manager** nor the **Participant** will be liable in relation to that party’s failure to comply with this agreement:

## for a sum in excess of the liability limits applying to the **FTR manager** under regulation 70A of the **Regulations**;

## for any indirect, consequential or special loss or damage; or

## for any loss of revenue, profit, anticipated saving or opportunity.

**Termination and Suspension**

# The **FTR manager** may cancel or suspend all or part of the **Participant’s** **FTR participation**:

## if the **Participant** breaches a warranty in clause 6 and, if the breach is reasonably capable of remedy, does not remedy the breach to the **FTR manager’s** reasonable satisfaction within five **business days** of the **FTR manager** notifying the **Participant** in writing of the breach;

## if the **Participant** otherwise commits a material breach of this agreement and, if the breach is reasonably capable of remedy, does not remedy the breach to the **FTR manager’s** reasonable satisfaction within five **business days** of the **FTR manager** notifying the **Participant** in writing of the breach;

## if there is a change to the **FTR allocation plan**, the **Act**, the **Regulations**, the **Code**, financial or securities legislation, or any other law in any jurisdiction that the **FTR manager** considers requires an amendment to this agreement and the parties have been unable to agree the amendment; or

## otherwise in accordance with the **FTR allocation plan**.

# Notwithstanding clause 19(a) or 19(b), the **FTR manager** may cancel or suspend all or part of the **Participant’s FTR participation** without prior notice if the **FTR manager** considers that the breach of warranty or other material breach of this agreement has caused, or will imminently cause, the **FTR manager** to be in breach of the **FTR allocation plan**, the **Act**, the **Regulations**, the **Code**, financial or securities legislation, or any other law in any jurisdiction.

# If the **FTR manager** has suspended all or part of the **Participant’s FTR participation** then the **FTR manager** will end the suspension and reinstate the **Participant’s FTR participation** as soon as reasonably practicable after the reason for the suspension has been remedied or otherwise ceased to the **FTR manager’s** reasonable satisfaction.

# Subject to clause 23, this agreement will terminate with immediate effect if the **FTR manager** cancels all of the **Participant’s** **FTR participation**.

# Notwithstanding that the **FTR manager** has cancelled or suspended all or part of the **Participant’s** **FTR participation**:

## this clause 23 and clauses 10, 12 to 18, 24, 25, 31 and 33 will continue to apply; and

## this agreement will continue to apply in relation to any **FTR** bid submitted or **FTR** acquired by the **Participant** before the cancellation or suspension.

## **Confidentiality**

# Subject to clause 25, the **FTR Manager** and the **Participant** will treat as confidential all information acquired by it in anticipation of, or in connection with, the **Participant’s FTR participation** in circumstances that can reasonably be taken to indicate such information is confidential to the other party. **FMCA certificates** are not confidential information.

# Clause 24 does not prohibit the **FTR Manager** or the **Participant** from disclosing any of the other party’s confidential information where:

## the disclosing party has the express prior written consent of the other party;

## the information becomes generally known to the public without fault on the part of the disclosing party;

## the disclosing party discloses the information to its employees or subcontractors with a need to know it for the purposes of the **Participant’s FTR participation**, provided the disclosing party informs the disclosees of the confidential nature of the information;

## the disclosing party is legally obliged to disclose the information, including under the **Act**, **Regulations** or **Code** or by a court of law; or

## the disclosure of the information is necessary for the purposes of judicial proceedings the disclosing party is a party to, including the hearing of a complaint by the **Rulings Panel**.

**Enforceability**

# The **Participant** acknowledges that its obligations under this agreement are given for the benefit of, and are enforceable by, any of the:

## **FTR manager**;

## **clearing manager**; or

## **Electricity Authority**.

**Amendment**

# No amendment to this agreementwill be effective unless it is in writing and signed by authorised representatives of both parties.

# Notwithstanding any amendment to this agreement, the version of this agreement which was in force at the time at which a bid was made will continue to apply to that bid and any acquisition of an **FTR** that occurs as a result of that bid.

**General**

# This agreement will be governed by and interpreted in accordance with the law of New Zealand.

# The **Participant’s** **FTR participation** is personal to the **Participant** and cannot be assigned, transferred, sold, leased, loaned or traded.

# The **FTR manager** (and its licensors or suppliers, as the case may be) own all proprietary and intellectual property rights in the **FTR information system** (including text, graphics, icons and sound recordings) and the software and other material underlying and forming part of the **FTR information system.** The **Participant** must not assert any right to any part of the **FTR information system,** or otherwise act in any manner, inconsistent with such position.

# The **Participant** must comply with all laws relating to its use of the **FTR information system** and (without limiting the foregoing) must not submit or maintain a bid if it knows or ought reasonably to know that the making of the bid or the acquisition of an **FTR** arising from acceptance of that bid would contravene any law, including the provisions of the Commerce Act 1986.

# The **Participant** acknowledges and accepts the following disclaimer:

# *1. EMS, as FTR Manager, will only accept a person as an FTR participant, and will only offer and issue FTRs to that person, if the person meets all of the following requirements:*

# *(a) Meets the prudential requirements in relation to FTRs set out in Part 14 of the Electricity Industry Participation Code 2010 (****Code****), as determined by the Clearing Manager under the Code.*

# *(b) Is a natural person resident in New Zealand, a body corporate that is incorporated in New Zealand,* *or a person with a branch office or other substantial physical presence in New Zealand through which it conducts its FTR participation;*

# *(c) Has provided EMS as FTR Manager with either:*

# *(i) a current and valid eligible investor certificate under clause 41 of Schedule 1 of the Financial Markets Conduct Act 2013 (****FMCA****) in respect of the issue or sale of FTRs; or*

# *(ii) a current and valid wholesale investor certificate under clause 44 of Schedule 1 of the FMCA.*

# *(d) Is registered by the Electricity Authority as an Industry Participant under section 9 of the Electricity Industry Act 2010 as a trader in electricity.*

# *(e) Agrees to the standard FTR participation agreement,*

# *(****authorised persons****).*

# *2. Information about FTRs made available by EMS through any medium (****FTR information****) is not:*

# *(a) advice on, or a recommendation of, FTRs or any other investment, financial product or risk management arrangement;*

# *(b) an offer or solicitation by EMS to issue or deal in FTRs or any other investment, financial product or risk management arrangement; or*

# *(c) directed to any person who is not an authorised person.*

# *3. Clause 2(c) applies to all FTR information including FTR information that is or may be accessible to persons who are not authorised persons, for example on the Internet or by being distributed outside New Zealand by persons to whom EMS initially made the FTR information available. No recipient of FTR information is authorised to distribute it outside New Zealand.*

# *4. Prior to any person acquiring, entering into or dealing in any investment, financial product or risk management arrangement they should obtain their own tax, legal and financial advice.*

# *5. The FTR auction, reconfiguration auction and assignment facilities provided by EMS as FTR Manager are not licensed financial product markets under the FMCA or otherwise.  However, those facilities and the FTR Manager are regulated under the Electricity Industry Act 2010, Electricity Industry (Enforcement) Regulations 2010 and Electricity Industry Participation Code 2010.*

**Signed:**

For the **FTR manager** by its authorised representative:

[Add electronic signature]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Add name and position]

For the **Participant** by its authorised representative(s):

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name(s): [Add name(s)]

Position(s): [Add position(s)]

Date: [Add date of signature]